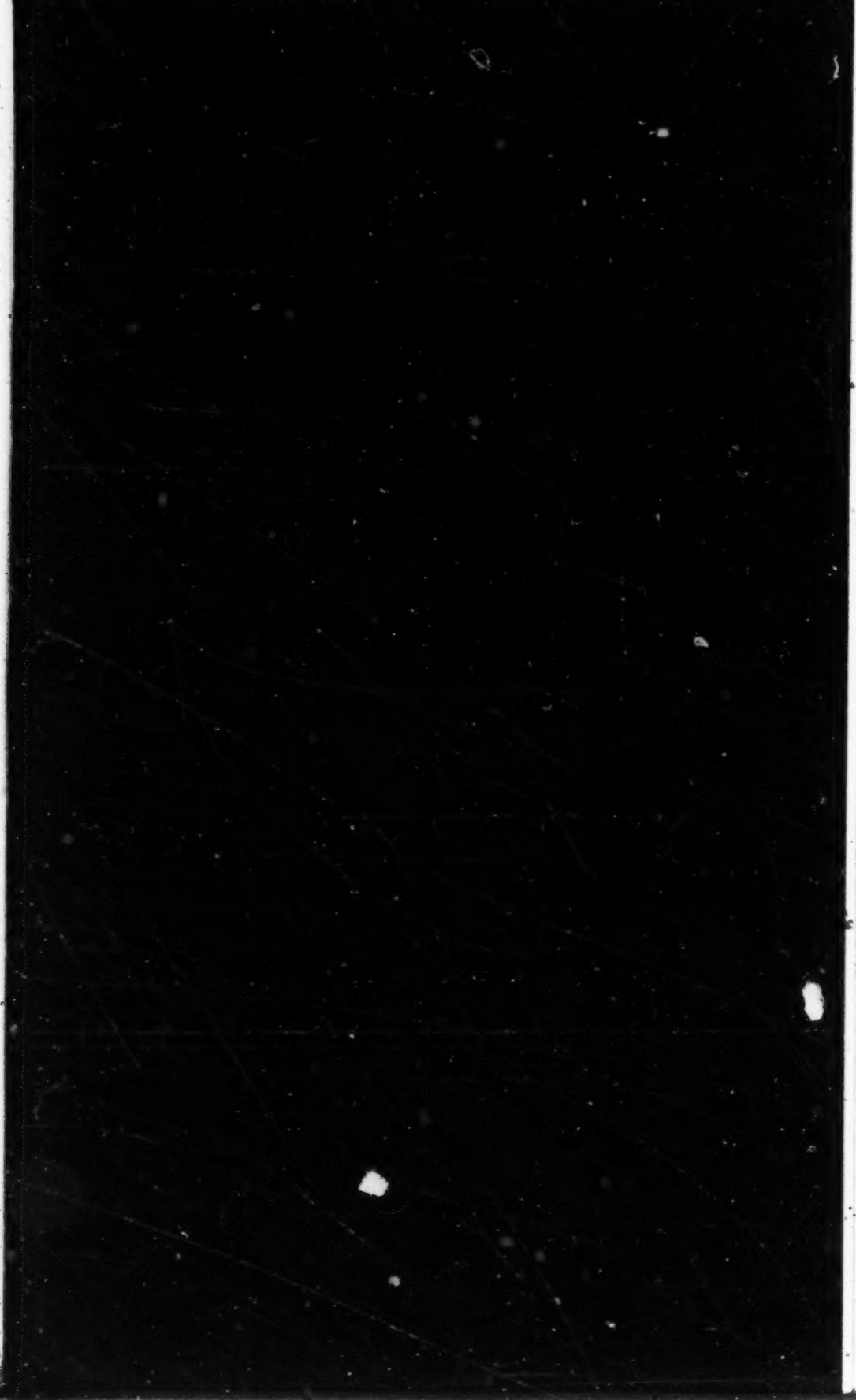
Blank Page



Blank Page

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 8, Original

THE STATE OF NEBRASKA, COMPLAINANT

v.

THE STATE OF WYOMING, DEFENDANT

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT

THE UNITED STATES OF AMERICA, INTERVENOR

PETITION OF INTERVENTION OF THE UNITED STATES OF AMERICA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the United States of America, by Homer Cummings, Attorney General, and by leave of the Court first had and obtained files this its petition of intervention in the above entitled cause.

73588—38

I

For a first and separate cause of action the United States alleges and shows as follows:

1. The North Platte River is a non-navigable stream. It rises in Colorado and flows through that State, Wyoming, and Nebraska.

2. France, Spain, and Mexico, by treaties with the United States in 1803, 1819, and 1848, respectively, and Texas by agreement with the United States in 1850, ceded to the United States territories including the entire basin of the North Platte River.

3. By the aforesaid cessions the United States became the owner of all lands and all rights in waters within the ceded territories with the exception of lands and water rights which were privately owned at the times of the cessions. There were no, or very few and limited, private rights in the waters of the North Platte River at the times of the cessions.

4. The rights of the United States in the waters of the North Platte River did not pass to Nebraska, Wyoming, and Colorado upon their creation and admission to the Union, but remained in the United States.

5. The United States has never, by Act of Congress or otherwise, abdicated or ceded away its rights in the waters of the North Platte River except that by acquiescence in local practices and by the Acts of July 26, 1866 (14 Stat. 253), July 9,

1870 (16 Stat. 218), and March 3, 1877 (19 Stat. 377), the United States adopted the practice of permitting rights in the waters of the streams of the public domain (including the North Platte River) to be acquired by private persons by compliance with state and territorial law prescribing how rights in waters could be acquired. From time to time private persons have, by appropriation in compliance with the law of one of the litigant States, acquired from the United States rights to use certain quantities of the waters of the North Platte River, and from time to time the United States, as is more specifically set forth hereinafter, has reserved waters of the River for Federal reclamation projects. Waters so appropriated or reserved were withdrawn from future appropriation, but rights in waters which have not been so appropriated or reserved are open to acquisition by private individuals as above described, all rights in such waters remaining meanwhile in the United States.

6. The United States, by authority of the Reclamation Act (June 17, 1902, c. 1093, 32 Stat. 388), acting through the Secretary of the Interior, has constructed a reclamation project in the basin of the North Platte River known as the North Platte Project. That Project embraces about 251,000 acres of land, of which 182,000 acres are in Nebraska and 69,000 are in

Wyoming. Of the lands in Nebraska, about 166,000 acres are irrigated by water which the United States diverts from the River in Wyoming, and conveys across the State line into Nebraska. The irrigation works of the Project include the Pathfinder Reservoir, in Wyoming, with a storage capacity of 1,070,000 acre feet, the Guernsey Reservoir, also in Wyoming, with a storage capacity of 70,000 acre feet, a diversion dam at Whalen, Wyoming, an extensive system of main and lateral canals in Wyoming and Nebraska, including interstate canals, and two inland reservoirs in Nebraska, known as Lake Alice and Lake Minatare, with a combined storage capacity of 77,000 acre feet. In the construction and development of the North Platte Project the United States has expended approximately $22,000,000, substantially all of which is to be repaid as provided in the Federal reclamation laws but approximately $17,000,000 of which has not yet been repaid.

7. For the purposes of the North Platte Project, as more particularly hereinafter described, the United States reserved and withdrew from future appropriation certain quantities of the theretofore unappropriated waters of the North Platte River. Pursuant to Section 8 of the Reclamation Act, and in order that an orderly system of priorities might be maintained, the United States effected these reservations by procedure substantially in conformity

with the law of the State where the waters were to be diverted as to the acquisition by appropriation of rights to the use of water. In the case of waters to be diverted or stored in Wyoming for use in Nebraska, the United States proceeded in conformity with the law of Wyoming, and, as far as was possible, with the law of Nebraska also.

8. Some of the waters reserved by the United States for the North Platte Project are used for the irrigation of lands included in the Project. These waters are either applied directly to irrigation through the main and lateral canals of the Project or are stored in the Project's reservoirs for withdrawal as needed. Of the total of 251,000 acres of land included in the Project, about 151,000 acres were public lands when the Project was commenced, and were thereafter disposed of by the United States to settlers as provided by the Reclamation Act, the settlers acquiring rights, on the payment of certain charges, to waters from the Project. The remaining 100,000 acres were privately owned when the Project was commenced, and the United States entered into contracts with the owners of those lands whereby the United States agreed to furnish them with water from the Project, and they agreed to pay certain charges. The United States is furnishing waters to these settlers and landowners and these settlers and landowners are paying the charges, but the charges have not yet been paid in full and in many cases final payments are not due for many years.

9. Some of the waters reserved by the United States for the North Platte Project are used for hydroelectric developments at Lingle and Guernsey, Wyoming, which are operated in connection with and as a part of the Project. These waters are withdrawn from the direct flow of the North Platte River and its tributary, the Laramie, and from storage in the Guernsey Reservoir.

10. Some of the waters reserved by the United States for the North Platte Project are supplied to irrigation districts under contracts entered into between the United States and the districts under the Act of February 21, 1911 (36 Stat. 925), known as the Warren Act. In these contracts the United States agreed to furnish to the districts, the landowners of which already possessed water rights acquired in the manner described in paragraph 5 hereof, stipulated quantities of water, and the districts, in return, agreed to pay stipulated charges therefor. The United States is supplying waters to the districts under these contracts, and the districts are paying the charges, but approximately $362,000 of those charges have not yet been paid. The total annual delivery under these contracts is about 340,000 acre feet, of which more than half are Project waters. Of these Project waters about 167,000 acre feet are storage waters from Pathfinder Reservoir, and the remainder are seepage and return flow waters from the lands of the North Platte Project.

11. Some of the waters reserved by the United States for the North Platte Project are delivered to

municipal and industrial concerns in the vicinity of the North Platte Project with which the Secretary of the Interior has entered into contracts, both perpetual and temporary, for the sale of certain quantities of water.

12. The United States, by authority of the Reclamation Act, acting through the Secretary of the Interior, has undertaken and has under construction a second reclamation project in the basin of the North Platte River, known as the Kendrick Project. This Project embraces about 66,000 acres of land, all of which are in Wyoming. The irrigation works of this Project include the Seminoe Dam and Reservoir, with a storage capacity of 909,000 acre feet; the Alcova Dam and Reservoir, with a storage capacity of 165,000 acre feet, and main and lateral canals. The total construction cost of the irrigation works of this Project will be approximately $20,000,000, of which approximately $9,000,000 has already been expended by the United States, and in addition, the Project will include a hydroelectric development costing $5,000,000 which is now under construction at Seminoe Dam. The United States expects to recoup by the disposal of water and electric energy all of its expenditures upon the Kendrick Project, but none of those expenditures has as yet been recouped.

13. For the purposes of the Kendrick Project, as more particularly hereinafter described, the United States reserved and withdrew from future

appropriation certain quantities of the theretofore unappropriated waters of the North Platte River. Pursuant to Section 8 of the Reclamation Act, and in order that an orderly system of priorities might be maintained, the United States effected these reservations by procedure in conformity with the law of Wyoming as to the acquisition by appropriation of rights to the use of water.

14. Some of the waters reserved by the United States for the Kendrick Project will be used for the irrigation of the lands included in the Project, some will be used to augment and regularize the flow of the North Platte River, and some will be used for the development of electric energy.

15. The United States therefore prays that it be decreed to be the owner of the waters of the North Platte River which the United States has reserved as alleged herein; that it be decreed to be the owner of any unappropriated waters of the river; and that the United States have such other and further relief in the premises as shall be found agreeable to equity and good conscience.

II

For a second and separate cause of action the United States alleges and shows as follows:

1. The United States repeats and realleges as a part of this cause of action all the allegations contained in paragraph 6 of the first cause of action.

2. For the purposes of the North Platte Project, as more particularly hereinafter described, the United States acquired rights to the use of certain quantities of the theretofore unappropriated waters of the North Platte River, by complying with the law of the State where the waters were diverted as to the acquisition by appropriation of rights to the use of water. In the case of waters diverted or stored in Wyoming for use in Nebraska, the United States complied with the law of Wyoming, and, as far as was possible, with the law of Nebraska also.

3. Some of the waters appropriated by the United States for the North Platte Project are used for the irrigation of lands included in the Project. These waters are either applied directly to irrigation or are stored in the Project's reservoirs for withdrawal as needed. Of the total of 251,000 acres of land included in the Project, about 151,000 acres were public lands when the Project was commenced, and were thereafter disposed of by the United States to settlers as provided by the Reclamation Act, the settlers acquiring rights, on the payment of certain charges, to waters from the Project. The remaining 100,000 acres were privately owned when the Project was commenced, and the United States entered into contracts with the owners of those lands whereby the United States agreed to furnish them with water from the

Project, and they agreed to pay certain charges. The United States is furnishing waters to these settlers and landowners and these settlers and landowners are paying the charges, but the charges have not yet been paid in full and in many cases final payments are not due for many years.

4. Some of the waters appropriated by the United States for the North Platte Project are used for hydroelectric developments at Lingle and Guernsey, Wyoming, which are operated in connection with and as a part of the Project. These waters are withdrawn from the direct flow of the North Platte River and its tributary, the Laramie, and from storage in the Guernsey Reservoir.

5. Some of the waters appropriated by the United States for the North Platte Project are supplied to irrigation districts under contracts entered into between the United States and the districts under the Act of February 21, 1911 (36 Stat. 925), known as the Warren Act. In these contracts the United States agreed to furnish to the districts, the landowners of which already possessed water rights acquired in the manner described in paragraph 5 of the first cause of action here, stipulated quantities of water; and the districts, in return, agreed to pay stipulated charges therefor. The United States is supplying waters to the districts under these contracts and the districts are paying the charges, but approximately $362,000 of those charges have not yet been paid. The total annual delivery under

these contracts is about 340,000 acre feet, of which more than half are Project waters. Of these Project waters about 167,000 acre feet are storage waters from Pathfinder Reservoir, and the remainder are seepage and return flow waters from the lands of the North Platte Project.

6. Some of the waters appropriated by the United States for the North Platte Project are delivered to municipal and industrial concerns in the vicinity of the North Platte Project with which the Secretary of the Interior has entered into contracts, both perpetual and temporary, for the sale of certain quantities of water.

7. The United States repeats and realleges as a part of this cause of action all the allegations contained in paragraph 12 of the first cause of action.

8. For the purposes of the Kendrick Project, as more particularly hereinafter described, the United States initiated the acquisition of rights to the use of certain quantities of the theretofore unappropriated waters of the North Platte River, by complying with the law of Wyoming as to the acquisition by appropriation of rights to the use of water, and the United States will hereafter perfect those rights by further compliance with such law.

9. Some of the waters appropriated by the United States for the Kendrick Project will be used for the irrigation of the lands included in the Project, some will be used to augment and regularize the flow

of the North Platte River, and some will be used for the development of electric energy.

10. The United States therefore prays that it be decreed to be the owner of the rights to the use of the waters of the North Platte River which it acquired as alleged herein; and that the United States have such other and further relief in the premises as shall be found agreeable to equity and good conscience.

HOMER CUMMINGS,
Attorney General.

JUNE 15, 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

Blank Page